

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

JAMES A. MORGAN,

Defendant.

CRIMINAL ACTION  
NO. 12-0023

**OPINION AND ORDER**

**Slomsky, J.**

**September 17, 2014**

On September 17, 2014, the Third Circuit Court of Appeals remanded this case to this Court for the sole purpose of either issuing a certificate of appealability or stating reasons why a certificate of appealability should not issue. (Doc. No. 80.) On August 22, 2014, this Court had entered an Order (Doc. No. 74) granting the Government's Motion to Dismiss Defendant's Motion to Vacate, Set Aside, or Correct a Sentence by a Person in Federal Custody pursuant to 28 U.S.C. § 2255 (Doc. No. 69). The reasons for granting the Motion to Dismiss were set forth in a 14-page Opinion filed by the Court on August 22, 2014 (Doc. No. 73).

In the Motion to Dismiss, the Government asserted that, because Defendant's guilty plea agreement contained an appellate waiver provision that covered any appeal or collateral attack to his conviction, sentence, or any other matter relating to his prosecution, the § 2255 Motion should be denied. (Doc. No. 71 at 3.) In the Opinion of August 22, 2014, the Court found that, because Defendant "entered into the guilty plea agreement and the appellate waiver provision knowingly and voluntarily, he has waived his right to bring the claims set forth in the present § 2255 Motion. Moreover there are no allegations of a miscarriage of justice sufficient enough to override the waiver." (Doc. No. 73 at 1.)

In view of the detailed explanation in the Opinion of August 22, 2014 as to why the § 2255 Motion was being denied, the Court will not issue a certificate of appealability. In his § 2255 Motion, Defendant has not made a substantial showing of the denial of a constitutional right.

**ORDER**

**AND NOW**, this 17th day of September 2014, it is **ORDERED** that no certificate of appealability will be issued in this case because Defendant has not made a substantial showing of a denial of a constitutional right.

BY THE COURT:

/s/ Joel H. Slomsky, J.  
JOEL H. SLOMSKY, J.